

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.25442 OF 2006

DATED: 23rd February, 2007.

Between :

Smt. Dr. M. Rathi Devi Reddy .. Petitioner

And

Union Bank of India & another. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.25442 OF 2006

ORDER :

This writ petition is filed seeking a declaration that the possession notice dated 20-11-2006 issued by the respondent Bank invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as arbitrary and illegal.

It is not in dispute that M/s. Parameshwara Exports had availed a loan from the respondents – Union Bank of India. The father-in-law of the petitioner by name Lakshma Reddy stood as guarantor offering a House property, bearing H.No. 8-2-248/A/5/26, Plot No.26, Road No.26, Venkateswara Hills, Banjara Hills, belonging to him as collateral security. The petitioner claims that in the year 2002 the collateral security offered by her father-in-law was substituted with 5 residential apartments situated in Padmarao Nagar. Since the residential house at Banjara Hills was released from the collateral security, the petitioner's father-in-law had sold the same to the petitioner under a Registered Sale Deed in the year 2001. Pursuant to the same, the petitioner has been in possession and enjoyment of the said house. While so, the petitioner's father-in-law died on 23-12-2003. Even prior to that, the respondent Bank issued a demand notice dated 5-7-2003 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') alleging that the principal borrower M/s. Parameshwara Exports committed default in payment of

amounts due and calling upon to pay a sum of Rs.85,57,432/- outstanding as on 5-7-2003. The petitioner claims that on receipt of the said notice, M/s. Parameshwara Exports paid a sum of Rs.38.65 lakhs. Apart from that the insurance amount of Rs.29 lakhs lying in the account of the borrower is also available with the respondent Bank. In spite of the same, the respondent Bank issued a possession notice dated 17-8-2006 in the name of the petitioner's father-in-law. Subsequently, a fresh possession notice dated 20-11-2006 was published in the local dailies in the name of the principal borrower M/s. Parameshwara Exports as well as the two sons of late Lakshma Reddy calling upon them to surrender the possession of the secured asset shown as House No. 8-2-248/A/5/26, Plot No.26, Road No.26, Venkateswara Hills, Banjara Hills. The said action of the respondent Bank is under challenge in this writ petition contending inter alia that since the above said property was already released from collateral security and subsequently the same was sold in favour of the petitioner by late Lakshma Reddy, the action of the respondent Bank in proposing to proceed against the said property is arbitrary and illegal. It is also contended that the principal borrower M/s. Parameshwara Exports paid substantial amounts and the liability existing as on today is only Rs.18 lakhs and therefore the impugned possession notice is unwarranted and unjustified.

The learned Counsel for the petitioner vehemently contended that since the original guarantor Lakshma Reddy died long back, his sons cannot be termed as borrowers within the meaning of Section 2 (f) of the Act and consequently the impugned action is without jurisdiction. Even otherwise according to the learned Counsel for the petitioner the respondents cannot take any steps against the sons of late Lakshma Reddy on the basis of Section 13 (2) notice dated 5-7-2003 issued during the lifetime of Lakshma Reddy.

The learned Counsel for the respondents at the outset raised an objection as to the maintainability of the writ petition on the ground that

an efficacious alternative remedy is available under Section 17 of the Act.

In the counter-affidavit filed on behalf of the respondents, it is stated that Sri Lakshma Reddy had deposited the original sale deed of residential house situated at Banjara Hills by creating equitable mortgage. Since the principal borrower M/s. Parameshwara Exports failed to regularise the loan account, the same was classified as Non-Performing Asset (NPA) and consequently the provisions of the Securitisation Act were invoked. It is pleaded that the alienation of the secured asset to any third party without obtaining the consent of the respondent Bank is illegal and void and therefore the petitioner cannot claim any right or interest in the said house. It is also contended that the original sale deed of the residential house at Banjara Hills is still in the custody of the respondent Bank and the plea of the petitioner that the said house was sold in her favour by late Lakshma Reddy is false.

I have heard the learned Counsel for both the parties in detail.

Admittedly, the guarantor – Lakshma Reddy is no more. Though he is survived by two sons, who may have a claim in the house in question being the legal heirs, they did not question the impugned action of the respondent Bank. On the other hand, this writ petition is filed by the daughter-in-law claiming title on the basis of a sale effected by late Lakshma Reddy during his lifetime. Though the petitioner admitted the fact that an equitable mortgage was created in respect of the said property with the respondent Bank by her vendor Lakshma Reddy, it is contended that during the lifetime of Lakshma Reddy itself the security was substituted with some other immoveable properties. The said plea has been denied by the respondents and it is their specific case that the original sale deed of the house in question still remains in their custody. In the circumstances, the title claimed by the petitioner on the basis of the alleged sale cannot be accepted and consequently she being a stranger to the transaction in question cannot maintain this writ petition.

Since it is not in dispute that the property in question is a secured asset, the death of the guarantor is of no consequence and does not affect the rights of the secured creditor to proceed against the secured asset under the provisions of the Securitisation Act. At any rate, since the sons of the guarantor failed to raise any objection, it is not necessary for this Court to go into the question whether the sons of the deceased guarantor fall within the definition of borrower and whether they can be made liable for the amounts due under the loan transaction.

Accordingly, the Writ Petition is dismissed. However, this shall not preclude the petitioner to work out the alternative remedy provided under Section 17 of the Act if so advised. No costs.

G. ROHINI, J.

Dt. 23-02-2007

gbs